

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Case No. 1:16-cr-94
(LJV)

vs.

April 5, 2017

JOSEPH KUROWSKI,

Defendant.

TRANSCRIPT - EXCERPT OF SENTENCING
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

JAMES P. KENNEDY, JR.
ACTING UNITED STATES ATTORNEY
BY: AARON J. MANGO, ESQ.
Assistant United States Attorney
Federal Centre
138 Delaware Avenue
Buffalo, New York 14202
For the Plaintiff

LAW OFFICES OF ANDREW C. LOTEMPIO
BY: ANDREW C. LOTEMPIO, ESQ.
227 Niagara Street
Buffalo, New York 14202
For the Defendant

PROBATION:

DAVID W. BALL, USPO

LAW CLERK:

KRISTIN E. BENDER, ESQ.

DEPUTY CLERK:

ALLISON P. GIOIA, ESO.

COURT REPORTER:

ANN M. SAWYER, RPR, CRR, NYRCR, NYACR
Robert H. Jackson Courthouse
2 Niagara Square
Buffalo, New York 14202
Ann Sawyer@nywd.uscourts.gov

1 (Excerpt commenced at 3:22 p.m.)

2 (Back on the record at 3:22 p.m.)

3 THE CLERK: All rise.

4 THE COURT: Please be seated.

5 Do either counsel know of any reason why sentence
6 should not now be imposed?

7 MR. LoTEMPPIO: No, Your Honor.

8 MR. MANGO: No, Judge. Just one thing, I can't let
9 the record stand without saying it. And I needed to consult
10 with the law enforcement officer because sometimes, you know,
11 I -- maybe I'm thinking I'm not paying attention, but I didn't
12 hear one apology, one -- one ounce of apology to the victims
13 in this case from the defendant. And that struck me, because
14 these are victim cases. There are minor girls on the other
15 side who, although they're not here, and although they didn't
16 submit any type of victim impact statement in this case,
17 they've got to live with this for the rest of their life. And
18 there was no sorry to them.

19 I just had to note that for the record, Judge. We're
20 ready for sentencing.

21 THE COURT: Mr. LoTempio, any response?

22 MR. LoTEMPPIO: Judge, I think from Mr. Kurowski's
23 statement, it was rather obvious that he's taken
24 responsibility and he's admitting that the behavior, in his
25 own mind, is outrageous and there's remorse in what he's

1 saying. And I believe his letter reflected that also, Judge.

2 THE COURT: Okay.

3 THE DEFENDANT: Judge, I just would like to say that
4 I -- I refrained from saying specifically the word "sorry"
5 because I'm not looking to be excused for my actions, but I
6 regret what I've done and how it's come about. So, in my
7 mind, that -- that says sorry without asking you to excuse
8 everything and let it all go.

9 THE COURT: Okay. Pursuant to the Sentencing Reform
10 Act of 1984 and the 2016 certification of the sentencing
11 guidelines, it's the judgement of the Court that the
12 defendant, Joseph Kurowski, is hereby sentenced to 30 months
13 of imprisonment. The cost of incarceration fee is waived.
14 Upon release, the defendant shall be placed on supervised
15 release for a term of ten years.

16 After his release the following conditions shall
17 apply:

18 Within 72 hours of release from custody from the
19 Bureau of Prisons, the defendant shall report in person to the
20 probation office in the district to which the defendant is
21 released unless the probation officer instructs the defendant
22 to report to a different probation officer or within a
23 different time frame.

24 The defendant shall comply with the standard
25 conditions of supervised release adopted by this Court. And I

1 note that there were new conditions of supervised release that
2 were adopted yesterday, so the conditions of supervised
3 release, the standard conditions of supervised release
4 effective as of April 4th, 2017 shall apply.

5 The defendant shall not commit any crime under
6 federal, state or local law.

7 The defendant shall not possess a controlled
8 substance unless it's prescribed by a physician.

9 The defendant shall not possess a firearm,
10 ammunition, destructive device, or a dangerous weapon as that
11 term is defined in the new standard conditions.

12 Because the instant offense occurred after
13 September 13th, 1994 and is not related to illegal substances
14 and because the defendant does not have a history of substance
15 abuse problems, the mandatory requirement for drug testing is
16 waived.

17 The defendant shall cooperate in the collection of a
18 DNA sample as required by the Justice for All Act of 2004.

19 The defendant shall provide the probation office
20 advanced notification of any computers, automated services, or
21 connective devices that will be used during the term of
22 supervision. The probation office is authorized to install
23 any application as necessary to surveil all activity on
24 computers or connected device owned or operated by the
25 defendant.

1 The defendant may be required to pay or pay in part
2 the cost of monitoring services at the monthly rate provided
3 by the probation office. The rate and payment schedule are
4 subject to periodic adjustment by the probation office.

5 The probation office shall be notified via electronic
6 transmission of impermissible or suspicious activity or
7 communications occurring on such computer or connected device
8 consistent with the computer monitoring policy in effect.

9 As triggered by impermissible or suspicious activity,
10 the defendant shall consent to and cooperate with
11 unannounced examinations of any computer equipment owned or
12 used by the defendant. This examination may include, but it's
13 not limited to, retrieval and copying of all data from the
14 computers, connected devices, storage media, and any internal
15 or external peripherals, and it may involve removal of such
16 equipment for the purpose of conducting a more thorough
17 examination. Any such monitoring or examination shall be
18 designed to avoid as much as possible any review of privileged
19 information or any private material that is not illegal or
20 reasonably likely to lead to illegal material or evidence
21 related to illegal activity.

22 The defendant shall enroll, attend and participate in
23 mental health intervention specifically designed for the
24 treatment of sexual offenders as approved by the probation
25 office. The defendant shall comply with the mandates of the

1 treatment program, and shall not leave such treatment until
2 discharge is agreed to by the probation office and the
3 treating agency. The defendant may be required to contribute
4 to costs based on ability to pay or availability of
5 third-party payment.

6 The defendant also shall submit to a mental health
7 evaluation -- a general mental health evaluation. If
8 indicated by the evaluation, the defendant shall participate
9 in mental health treatment, the details of the treatment to be
10 approved by the probation office. The defendant is not to
11 leave treatment until discharge is agreed to by the probation
12 office and the treating agency.

13 While in treatment or taking psychotropic medication,
14 the defendant shall abstain from the use of alcohol. The
15 defendant is required to contribute to the cost of services
16 rendered, copayment in an amount to be determined by the
17 probation office based on the ability to pay or the
18 availability of third-party payment.

19 The defendant shall not have deliberate contact with
20 any child under 18 years of age except for his biological or
21 adopted children unless approved by the probation officer.

22 The defendant shall not loiter within 100 feet of
23 schoolyards, playgrounds, arcades, or other places primarily
24 used by children under the age of 18.

25 The probation office has the discretion to authorize

1 the defendant to pick up his children from school or other
2 functions, but the defendant must obtain authorization in
3 advance.

4 The defendant shall not possess or download any child
5 pornography as that term is defined in 18, United States Code,
6 Section 2256 as follows: Any visual depiction including any
7 photograph, film, video, picture or computer or
8 computer-generated image or picture, whether made by --
9 whether made or produced by electronic, mechanical or other
10 means of sexually explicit conduct as that term is defined in
11 this statute.

12 The defendant shall provide the probation office with
13 access to any requested personal and/or business financial
14 information.

15 The defendant shall register with the state sex
16 offender registration agency in any state where the defendant
17 resides, is employed, carries on a vocation or is a student,
18 and shall provide proof of registration to the probation
19 officer.

20 The probation office is authorized to release the
21 defendant's presentence investigation report to the New York
22 State Board of Examiners of Sex Offenses. Further disclosure
23 to the county court and the parties involved in the
24 determination of the defendant's final classification level is
25 also authorized.

1 The defendant shall submit to a search of his person,
2 property, vehicle, place of residence, or any other property
3 under his control based on reasonable suspicion, and shall
4 permit any evidence or contraband that may be discovered to be
5 confiscated.

6 The defendant must submit to a periodic polygraph
7 test at the discretion of the probation officer as a means to
8 ensure that he's in compliance with the requirements of his
9 supervision or treatment program.

10 The Court finds that the defendant does not have the
11 ability to pay the fine and orders the fine waived. The Court
12 does find, however, that the defendant is not indigent and,
13 therefore, orders the mandatory \$5,000 Justice For Victims of
14 Trafficking Act of 2015 assessment.

15 While incarcerated, if the defendant is non-UNICOR or
16 UNICOR grade 5, the defendant shall pay installments of \$25
17 per quarter. If assigned grades 1 through 4 in UNICOR, the
18 defendant shall pay in installments of 50 percent of his
19 monthly pay.

20 While on supervision, the defendant shall make
21 monthly payments at the rate of 10 percent of monthly gross
22 income. Payments shall be made to the Clerk, United States
23 District Court, Attention Finance, United States Courthouse,
24 2 Niagara Square, Buffalo, New York 14202.

25 The defendant also shall pay to the United States a

1 mandatory special assessment of \$100 due immediately, payment
2 shall be made to the Clerk, United States District Court,
3 Attention Finance, United States Courthouse, 2 Niagara Square,
4 Buffalo, New York 14202.

5 If the special assessment is not paid when he is
6 incarcerated, payment of the special assessment shall begin
7 under the Bureau of Prisons Inmate Financial Responsibility
8 Program.

9 So in determining the sentence, I have carefully
10 reviewed all the circumstances of the case and the plea. I
11 began my analysis by considering the advisory guidelines.
12 I've also considered all the arguments made by the attorneys
13 on both sides and by, Mr. Kurowski, you, yourself as to what
14 the appropriate sentence should be in this case. And, most
15 importantly, I've considered the factors in Section 3553(a)
16 that I stated earlier and I'm not repeating now.

17 I'm not going to impose a fine or the cost of
18 imprisonment or supervised release because I don't think you
19 have the ability to make such payments, especially because you
20 have to pay the \$5,000 required under the Justice For Victims
21 of Trafficking Act and the mandatory \$100 special assessment.

22 This is one of those cases where I find myself in
23 agreement with almost everything that your lawyer said and
24 that the prosecutor said. There's an awful lot that's true in
25 all of it.

1 You know, I don't buy the statement that you were
2 trying to learn to communicate with others about any subject
3 at all. There clearly was a very strong sexual component to
4 these communications, and I understand this is probably a
5 small fraction of all the communications that you were
6 involved in, but there's a pattern here. There's a pattern
7 here.

8 On the other hand, what you did I think coincided
9 with a period of depression, of probably what was clinical
10 depression and other mental health issues. And I believe
11 based on the letters that I reviewed -- and I've read them
12 all, I read them all more than once -- and the mental health
13 assessments that I reviewed, that your conduct was caused by
14 and large by those mental health issues.

15 You know, I read the letters and I read what you said
16 to these young girls in the presentence report, and you can't
17 help but think of Jekyll and Hyde. There's two different --
18 there's two different people. There's a different person on
19 the computer than the, you know, the kind and shy person when
20 you're dealing with people one on one.

21 But the computer persona is a really bad and
22 dangerous persona and headed -- and was headed in a really bad
23 direction. You know, there's no evidence that you ever acted
24 on anything that you said on the computer, and you say you
25 never would have acted on what your suggestions were on the

1 computer. And I think that you believe that.

2 But what if one of these girls says, okay, let's go,
3 I'll be there in 15 minutes? What -- what do you say to that?
4 No? Never mind? Just kidding?

5 I mean, you're painting yourself into a corner by the
6 suggestions and the talk on the -- on the computer. So if one
7 of these computer correspondents says yes, you know, I'm on my
8 way, you may very well be in a whole lot more trouble than you
9 are now.

10 And in some ways I think that getting caught when you
11 did may have been a blessing because -- and I know it may be
12 hard for you to face that right now given the fact that you're
13 going to go to jail, but -- but it may have been a blessing
14 because, I'll tell you, I have had a number of other people in
15 this court who have acted on the things that they said on the
16 computer, and -- and I did not vary downward for those folks.
17 I'm pretty tough on these kinds of cases when there's action
18 in addition to the words and the pictures, and -- and -- and
19 because I feel the need to protect society from predators.

20 Now, I don't think you're a predator. I don't think
21 you're a pervert. I don't think you're a pedophile. But I do
22 think you were heading in a very dangerous direction, and I do
23 think you were opening yourself up to the possibility of
24 acting on something that you never in a million years think
25 that you would act on.

1 I mean, as you said to me today, I can't believe that
2 I did this. This is not like me. This is not --

3 Well, you know, if one of these young girls says
4 let's go, and -- and then you get involved in this activity,
5 you know, for God's sakes, now we've got a whole different
6 ball game. So I think that maybe it was a blessing that you
7 got caught where you were in the process when you got caught.

8 And your communications were with some really young
9 girls. You know, so, the count that you pled guilty to
10 involved a 17 year old, somebody just short of 18 years old.
11 And that was, you know, she was the one that sent you the --
12 some sexually explicit photos that constituted child
13 pornography. But you also got photos that constituted child
14 pornography from a 16 year old, and you engaged in very
15 sexually explicit talk with her.

16 You tried to get photos from a girl who's 15 and you
17 asked her to set you up with friends of hers who might have
18 been 14 or 15, if they might have been in to you.

19 And then worst of all, as Mr. Mango referred in his
20 comments with the 13 year old, when you find out -- I mean,
21 initially you think she's 15, then she tells you she's 13,
22 you're initially angry. But the discussion then gets terribly
23 explicit with a 13-year-old girl. I mean, this is now we're
24 talking about babies. We're talking about kids who have no
25 appreciation. And maybe, as your lawyer says, she is

1 communicating with other people, you know, I don't know. I
2 don't know. But I do know that 13 is awfully young. And --
3 and, you know, asking her to meet you for sexual purposes,
4 telling her what you're going to do to her and things like
5 that is just serious and bad stuff.

6 When I was -- when I was a kid, and Mr. LoTempio may
7 remember this, Mr. Mango is probably too young for it, but we
8 used to have concept of guys who had beer muscles, and these
9 were guys who thought they were real tough when they got a
10 couple beers in them. And they were generally nice guys, and
11 guys who would never think of getting involved in fights. But
12 when they had a few beers in them, they were willing to act
13 and talk tough. And sometimes those beer muscles got them
14 into trouble because they had to act on the tough talk that
15 they had.

16 I think what we're talking about here is something
17 that's parallel to that. When you're hiding behind the
18 computer and you're anonymous, you've got the equivalent of
19 beer muscles. You're talking a good -- a good ball game. And
20 a person who's very appropriate and maybe even a little shy in
21 actual interpersonal communications, when he gets on the
22 internet and hides behind the anonymity of a computer screen
23 is something very different.

24 But when that results in minors sending photos that
25 constitute child pornography, that crosses the line. And that

1 requires what I think is a fair punishment and a sentence that
2 promotes -- a sentence that promotes respect for the law and
3 that deters you and others from committing conduct like this,
4 a sentence that says what you've done is wrong, and is
5 seriously wrong.

6 You know, in cases like this, I can't tell you how
7 difficult it is to try to fashion a sentence that is fair and
8 that does justice to everyone, to the victims, to society, to
9 you, to your family sitting in back. It's -- it's -- it's a
10 darn near impossible task. And I have a feeling that today
11 the sentence that I'm imposing is making no one happy. You
12 know, sometimes I think that I impose a sentence that makes
13 both sides happy, sometimes -- most often I impose a sentence
14 that I think makes one side happy. I think everybody's going
15 to leave the courtroom unhappy today. Nobody's going to think
16 I did a good job.

17 You and your family and your lawyer think that
18 putting you in jail is the wrong thing, I know that. The
19 prosecutor and perhaps others think I'm being way to lenient
20 with you. This is the best I can do under these circumstances
21 to come up with something that's fair, that promotes respect
22 for the law, that fits all the Section 3553 factors.

23 The nature and the circumstances of the offense I
24 think might call for a harsher sentence. Your personal
25 history and characteristics might call for a more lenient

1 sentence. But I think taking into account those factors and
2 all the factors in Section 3553(a) (2) justify the sentence
3 that I've imposed as appropriate under all the circumstances.

4 So, in addition to that, I've imposed a ten-year
5 period of supervised release that is designed to do a couple
6 things:

7 One. To help you return to society after you've been
8 incarcerated;

9 Two. To allow the office of probation and pretrial
10 services to keep an eye on you for a significant period of
11 time to make sure that you don't regress.

12 I have a lot of confidence, as your lawyer does, that
13 you won't. But I want to -- given the fact that this involved
14 young girls who were so young, I'd rather be safe than sorry
15 under circumstances like this, and that's why I'm imposing a
16 pretty significant term of supervised release.

17 So, based on the guidelines, based on the positions
18 of the parties, based on my review of all the facts and
19 circumstances in this case, I believe that the sentence
20 imposed is sufficient but not greater than necessary to comply
21 with the purposes of sentencing in Section 3553.

22 Pursuant to Rule 32J1(b) of the Federal Rules of
23 Criminal Procedure, I now must advise you of your right to
24 appeal. You have a statutory right to appeal your sentence
25 under certain circumstances, particularly if you think the

1 sentence is contrary to law. A defendant may waive those
2 rights as part of a plea agreement.

3 As I think you recognize, Mr. Kurowski, you entered
4 into a plea agreement in which you waived your rights to
5 appeal a sentence that falls within or is less than the
6 calculated guidelines range of imprisonment as this sentence
7 is. Waivers like these are generally enforceable, but if you
8 believe the waiver is unenforceable for some reason, you
9 can present that theory to an appellate court.

10 If you want to attempt to appeal some issue that you
11 believe survives your waiver, you must file a notice of appeal
12 within 14 days.

13 If you're unable to pay for the cost of an appeal,
14 you may apply for leave to appeal in forma pauperis, that
15 means leave to appeal without paying costs.

16 And you have the right to be represented by counsel
17 for any appeal. If you can't afford counsel, you have the
18 right to have counsel appointed to represent you.

19 One last thing. I am recommending that the sentence
20 be served in a facility that has the wherewithal to provide
21 you with mental health care and specifically mental health
22 care for people who have been convicted of sexual-related
23 offenses, so I make that recommendation to the Bureau of
24 Prisons. That's my primary recommendation, the first
25 priority.

1 The second priority is I'll recommend that you be
2 placed in a facility as close to Western New York as possible
3 so that your -- your family, obviously, you have a tremendous
4 amount of support in your family, and that's a wonderful
5 thing.

6 You're a young guy. You're going to be a young guy
7 when you get out of prison. You're going to have a lot of
8 years ahead of you. And as your lawyer says, you're
9 extraordinarily bright, you're very eloquent, you've got a lot
10 of talent and a lot of tools that you can use for the good of
11 society. I have no doubt that, you know, when you get this
12 behind you, you're going to become a productive member of
13 society. And you -- you've got, you know, lots of people who
14 love you and who are going to keep you on the straight and
15 narrow. And you need to rely on them for their help when you
16 need it.

17 And you also, you know, got some medical care and
18 attention that you recognize that you need now and that you're
19 going to be getting, and that's going to help you. And I have
20 no doubt that you have a bright future, but you've got a
21 little bit of a hurdle to get over before you starting living
22 that bright future.

23 I wish you all the luck in the world, and I hope that
24 you can turn this around. I think you can. I think you can.

25 Anything further?

1 MR. MANGO: Judge, we move to dismiss Counts 1, 2 and
2 3 of the indictment and ask that the forfeiture provisions of
3 the plea agreement be incorporated into the sentence which
4 included forfeiting the defendant's iPhone, iPad, and MacBook.
5 We'll provide a final order of forfeiture on that point.

6 THE COURT: Okay. The motions to dismiss the other
7 counts of the indictment are granted. Any objection to the
8 forfeiture?

9 MR. LoTEMPIO: No, Judge.

10 THE COURT: Okay. So the motion for the forfeiture
11 is granted, as well, and you'll provide me with a written
12 order on that?

13 | MR. MANGO: Yes, Judge.

14 THE COURT: And I will sign it. Anything further,
15 Mr. LoTempio?

16 MR. LoTEMPIO: No, Your Honor.

17 THE COURT: Okay. The defendant is remanded. And
18 good luck to you, sir.

19 Thank you, folks, for being here. I'm sorry under
20 the circumstances. And I know that sentences like these have
21 an impact on the family, as well, and my heart goes out to
22 you. Thanks very much.

23 THE CLERK: All rise.

24 | (Proceedings concluded at 3:45 p.m.)

25 | * * * * *

1 CERTIFICATION
23 I certify that the foregoing is a
4 correct transcription of the proceedings
5 recorded by me in this matter.
6
7
89 s/ Ann M. Sawyer
10 Ann M. Sawyer, FCRR, RPR, CRR,
NYRCCR, NYACR, Notary Public
Official Reporter
U.S.D.C., W.D.N.Y.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25